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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Clover Leaf Trading Co.

Serial No. 75/853,341

Myron Amer of Myron Amer, P.C. for Clover Leaf Trading Corp.

Elizabeth A. Hughitt, Trademark Examining Attorney, Law Office 111 (Craig D. Taylor, Managing Attorney).

Before Hanak, Wendel and Drost, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On November 17, 1999, Clover Leaf Trading Corp.
(applicant) filed Trademark Application Serial No.
75/853,341 to register the mark GOLDEN LEAF BRAND and
design with Chinese characters for goods ultimately
identified as "Chinese food products, namely, Chinese style
sausage with turkey and duck liver added" in International

Class 29.¹ An informal drawing of applicant's mark is set out below.

In response to the Examining Attorney's requirement for a proper special form drawing, applicant has expressly agreed to comply with this requirement. Brief at 1-2.² In response to the Examining Attorney's requirement for a translation of the Chinese characters, applicant translated those characters as: "always prosperous opportunity."³ Response dated August 28, 2000. Also, in response to the Examining Attorney's requirement, applicant disclaimed the word "brand," apart from the mark as shown.

In addition to these requirements, the Examining Attorney has finally refused registration on the ground

¹ The application was based on an allegation of a bona fide intent to use the mark in commerce.

² In the event that applicant ultimately prevails in this application, it must comply with the Examining Attorney's requirement for an acceptable drawing before the mark can be published.

³ In its Appeal Brief (p. 1), applicant agreed to delete the word "in" that appeared in its translation, which it submitted in the Reply dated August 28, 2000.

that applicant's mark, as applied to the goods recited in the application, so resembles two prior registrations discussed below for the identified goods as to be likely to cause confusion, or to cause mistake or to deceive.⁴ 15 U.S.C. § 1052(d). The first registration is for the mark GOLD LEAF (typed drawing)⁵ for "frying chicken parts." The second registration is for the mark GOLD LEAF and design⁶ for "roasting chickens, and frying chicken parts including split breasts with ribs and abdominal fat attached, breasts with ribs and abdominal fat attached, legs, drumsticks, thighs, wings, backs and necks, gizzards and hearts, wing parts, breast fillets, and backs," shown below.⁷

⁴ Applicant originally identified its goods as "Chinese food products." Because of this broad identification of goods, in her first Office action, the Examining Attorney cited the two registrations discussed above and the following three additional registrations against applicant's mark: (1) Registration No. 2,098,775 consisting of Chinese characters translated as "golden leaf slim tea" or "golden leaf diet tea" for herbal tea; (2) Registration No. 1,818,071 for the mark GOLDEN LEAF for various bread and pastry products sold frozen through institutional channels, and (3) Registration No. 1,451,077 for the mark GOLD LEAF for fruit-based pie fillings. When applicant limited its identification of goods to "Chinese food products, namely, Chinese style sausage with turkey and duck liver added," the Examiner Attorney withdrew these three registrations.

⁵ Registration No. 998,276, issued November 12, 1974; first renewal.

⁶ Registration No. 1,226,077, issued February 1, 1983; Section 8 affidavit accepted and Section 15 affidavit acknowledged.

⁷ The drawing for Registration No. 1,226,077 shown here is from a hard copy of the registration, which shows the mark more clearly. The drawing is lined for the color gold and color is claimed as a feature of the mark.

Both registrations are owned by the same party, Tyson Foods, Inc.⁸ After the Examining Attorney made the refusal final, applicant appealed. Both the Examining Attorney and applicant have filed briefs. An oral hearing was not requested.

The Examining Attorney argues that while the terms GOLD LEAF and GOLDEN LEAF BRAND are not identical, they create the same impression, i.e., a gold-colored leaf. Noting the differences between applicant's mark and the cited registrations, the Examining Attorney's position is that the additional word "brand," the Chinese characters, and the shamrock design do not change the commercial impression. Under her analysis, "consumers would clearly call for the parties' products as GOLDEN LEAF (the applicant) and GOLD LEAF (the registrant)", and that the

⁸ In its Reply Brief, applicant points out that the printouts of the registrations in the file show different parties as owners of the registrations. However, in the assignment records of the Office, Tyson Foods, Inc is listed as the owner of both registrations. See Reel and Frame Nos. 1815/0624, 0860/0671, 0860/0655, and 0582/0931 for Registration Nos. 998,276 and 1,226,077. Also, Registration No. 1,226,077 claims ownership of Registration No. 998,276.

other elements would not serve as source indicators. Brief at 7.

In addition, the Examining Attorney argues that both applicant's and registrant's goods are meat products that often emanate from the same source. She introduced several registrations showing registration of the same mark for both sausage and chicken. While applicant's goods are Chinese style sausage, the Examining Attorney also observed that registrant's goods are not limited to a particular type of chicken and registrant must be presumed to be marketing all types of chicken, including Chinese style stir-fry.

Finally, the Examining Attorney argues that the withdrawn registrations are distinguishable because they involve products (pie filling, breads, and herbal tea) that are significantly distinct from applicant's goods as ultimately identified.

On the other hand, applicant argues that the Examining Attorney failed to appreciate the "addition thereto of the ending 'EN' to the word 'Gold' and the third word 'BRAND,' that warrants concluding that there would be cognitive factors leading away from any likelihood of public confusion." Brief at 3. In addition, applicant argues that the differences between Chinese style sausage and

frying chicken parts and roasting chickens are more than enough to obviate confusion. Finally, applicant maintains that the differences between the goods in the withdrawn registrations and applicant's goods are of the same nature as that of the differences between applicant's goods and the currently cited registrations and logic dictates that there is no confusion in the marketplace.

We have considered the arguments of the Examining Attorney and applicant and the evidence of record. We conclude that the refusal to register under Section 2(d) is well taken, and we affirm the Examining Attorney's refusal.

In a case involving a refusal under Section 2(d), we analyze the facts as they relate to the relevant factors set out in In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 1361, 177 USPQ 563, 567 (CCPA 1973). In considering the evidence of record on these factors, we must keep in mind that "[t]he fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

The first question we address is whether applicant's and registrant's marks, when compared in their entirety, are similar in sound, appearance or meaning such that they

create a similar overall commercial impressions. The test is not whether the marks can be distinguished in a side-by-side comparison, but whether they are sufficiently similar in their overall commercial impression so that confusion as to the source of the goods marketed under the respective marks is likely to result. In this analysis, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of the mark, provided [that] the ultimate conclusion rests on consideration of the marks in their entirety." In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

In this case, applicant's mark consists of the words GOLDEN LEAF BRAND with a shamrock design and Chinese characters translated as "always prosperous opportunity." Registrant's marks consist of the typed words GOLD LEAF and the mark GOLD LEAF with a leaf design. Applicant correctly points out that the registered marks do not have the "en" at the end of "gold," or the disclaimed term "brand." However, we do not find these differences in the marks create different overall commercial impressions. We agree with the Examining Attorney that the terms "gold leaf" and "golden leaf" create the same impression: a gold-colored leaf. The disclaimed word "brand" is of little trademark

significance. Jacob Frost Packing Co. v. C.W. Antrim & Sons, 118 F.2d 576, 49 USPQ 64, 66 (CCPA 1941) ("Brand" is "by itself, obviously incapable of trademark significance"); Kraft, Inc. v. Country Club Food Industries, 230 USPQ 549, 551 (TTAB 1986) ("The term "BRAND" is virtually without trademark significance"); In re Thomas H. Wilson, ___ USPQ2d ___, ___, Application No. 75/285,881 (TTAB January 19, 2001) ("BRAND is devoid of source-indicating significance").

As to the other features of applicant's mark, we do not find that the presence of applicant's Chinese characters would prevent the words GOLDEN LEAF from being the dominant part of the mark. For most Americans, the Chinese characters would be just another feature of the design because they would not be able to translate the characters. The addition of Chinese characters, by itself, does not change the commercial impression of a mark with English wording. Inasmuch as applicant's goods are Chinese style sausage, it would not be unexpected that Chinese characters would appear with English wording in keeping with the Chinese theme of the product.

In this case, the marks are similar because prospective purchasers would use the word portion of the marks "GOLD LEAF" and "GOLDEN LEAF" to ask for the

products. The marks sound similar, they look similar, and they have similar meanings. The words GOLD LEAF and GOLDEN LEAF are not weak or descriptive terms when applied to the goods, and applicant's design features do not change the overall impression of its marks. Therefore, the marks when compared in their entireties have similar overall commercial impressions.

The fact that food products are sold under similar marks hardly establishes that there is a likelihood of confusion. There is no per se rule that all food products are related. We must next determine if applicant's Chinese style sausage with turkey and duck liver added is related to registrant's frying chicken parts and roasting chicken. We must determine whether there is a likelihood of confusion based on the identification of goods in the registration and the application. Paula Payne Products v. Johnson Publishing Co., 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) ("Trademark cases involving the issue of likelihood of confusion must be decided on the basis of the respective descriptions of goods").

In order to support a determination that the goods are related, it is not necessary that respective goods be identical or even competitive. If the goods are marketed in such a way that would lead customers to a mistaken

belief that they originate from or are in some way associated with the same producer or that there is some association or connection between the producers of the respective goods, the goods are related. Recot Inc. v. M.C. Becton, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000); In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978).

Here, both applicant's and registrant's products are meat products. Registrant's products are poultry parts (chicken) and applicant's sausage contains poultry parts (turkey and duck livers). Consumers familiar with registrant's chicken parts who encountered applicant's sausage with turkey and duck liver added would likely believe that these sausages sold under a very similar mark come from the same source as that of the chicken parts.

The Examining Attorney's conclusion that registrant's chicken and applicant's sausage are related products is supported by the third-party registrations that the Examining Attorney has made of record. Although these registrations are not evidence that the marks shown in the registrations are in commercial use or that the public is familiar with them, they do have some relevance in suggesting that goods of applicant and registrant may emanate from the same source. In re Mucky Duck Co., 6

USPQ2d 1367 (TTAB 1988). Here, many of these registrations suggest that sausage and chicken are marketed under the same trademarks.⁹ This evidence reinforces the relatedness determination of the Examining Attorney.

Finally, when applicant's identification of goods was much broader, (Chinese food products), the Examining Attorney cited three additional registrations for GOLD LEAF or GOLDEN LEAF. While these registrations were subsequently withdrawn, applicant maintains that the same logic that lead to the withdrawal of the three cited registrations should lead to a conclusion that there is no likelihood of confusion in this case. We disagree. Bread and pastries sold frozen in institutional food channels, fruit-based pie filling, and herbal tea, are significantly different products from the goods involved here. Both applicant's and registrant's goods are meat products. Both products are, or contain, poultry. Both products may be found in the same part of the store, the meat section. The question is whether the public is likely to reasonably believe that the products come from the same source when

⁹ We find the registrations that appear to be restaurants that are distributing their food products to be less relevant. See Registration Nos. 2,389,112; 2,389,063; 2,316,050; 2,265,119; 2,363,154; and 2,280,825.

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sold under similar marks. Here, the evidence supports the relatedness of Chinese style sausage with turkey and duck liver added and roasted and frying chickens.

Decision: The refusal to register is affirmed.